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7
UNITED STATES DISTRICT COURT
8
DISTRICT OF NEVADA

9
10 RELIASTAR LIFE INSURANCE
COMPANY,

11 Plaintiff

12 v.

13 GRAND HILLS RESORT AND
14 COUNTRY CLUB, INC., and PATRICK
HOWERTER

Case No. 2:14-CV-01157

15
16 Defendant.
17

18
STIPULATED PROTECTIVE ORDER

19 I. **PURPOSES AND LIMITATIONS**

20 1.1 Disclosure and discovery activity in this matter, is likely to involve production of
21 confidential, proprietary, or private information for which special protection from public
22 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
23 Accordingly, the Parties hereby stipulate to and petition the Court to enter the following
24 Stipulated Protective Order. The Parties acknowledge that this Order does not confer blanket
25 protections on all disclosures or responses to discovery and that the protection it affords from
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STIPULATION AND [PROPOSED] PROTECTIVE ORDER

1 public disclosure and use extends only to the limited information or items that are entitled to
 2 confidential treatment under the applicable legal principles.

3 1.2 In the event that, prior to trial, any Party wishes to file any motion, declaration, exhibit
 4 or other paper in this litigation containing or referencing any Confidential Information, as
 5 designated under the terms of this Stipulated Protective Order, the motion, declaration, exhibit or
 6 other paper shall be filed in accordance with Local Rule 10-5. That same Party shall then be
 7 obligated to file the required application with the Court required to keep the document under seal.

8 **2. DEFINITIONS**

9 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
 10 information or items under this Order.

11 2.2 “CONFIDENTIAL” Information or Items: Information (regardless of how it is
 12 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
 13 of Civil Procedure 26(c) or other applicable law.

14 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
 15 as their support staff).

16 2.4 Disclosure or Discovery Material: all items or information, regardless of the
 17 medium or manner in which it is generated, stored, or maintained (including, among other things,
 18 testimony, transcripts, and tangible things), that are produced or generated in this matter.

19 2.5 Expert: a person with specialized knowledge or experience in a matter pertinent to
 20 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
 21 consultant in this action.

22 2.6 House Counsel: attorneys who are employees of a party to this action. House
 23 Counsel does not include Outside Counsel of Record or any other outside counsel.

24 2.7 Non-Party: any natural person, partnership, corporation, association, or other legal
 25 entity not a Party.

26 2.8 Outside Counsel of Record: attorneys who are not employees of a party to this
 27 action but are retained to represent or advise a party to this action.

1 2.9 Party: any party to this action that has joined this Stipulated Protective Order,
2 including all of its officers, directors, employees, consultants, retained experts, and Outside
3 Counsel of Record (and their support staffs).

4 2.10 Producing Party: any Party to this action that produces Disclosure or Discovery
5 Material.

6 2.10 Professional Vendors: persons or entities that provide litigation support services
7 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
8 organizing, storing, or retrieving data in any form or medium) and their employees and
9 subcontractors.

10 2.11 Protected Material: any Disclosure or Discovery Material that is designated as
11 “CONFIDENTIAL.”

12 2.12 Receiving Party: a Party that receives Disclosure or Discovery Material from the
13 Producing Party.

14 || 3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony designated in accordance with Paragraph 5.2(b), conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Producing Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

1 **4. DURATION**

2 Even after final disposition of this litigation, the confidentiality obligations imposed by
 3 this Order shall remain in effect until the Producing Party agrees otherwise in writing or a Court
 4 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
 5 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
 6 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
 7 including the time limits for filing any motions or applications for extension of time pursuant to
 8 applicable law.

9 **5. DESIGNATING PROTECTED MATERIAL**

10 5.1 Exercise of Restraint and Care in Designating Material for Protection. A Party will
 11 only designate as “CONFIDENTIAL” documents or other disclosures after making a bona fide
 12 determination that the material does, in fact, contain trade secrets, special formulas, company
 13 security matters, customer lists, financial data, certain personal identifying or health information
 14 of individuals or certain confidential contracts with third parties, provided such documents have
 15 not previously been disclosed by a Party to anyone except those in its employment, those retained
 16 by it, or those subject to a confidentiality agreement or protective order.

17 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
 18 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
 19 Disclosure of Discovery Material that qualifies for protection under this Order must be clearly so
 20 designated before the material is disclosed or produced.

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (e.g., paper or electronic documents, but
 23 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
 24 Party affix the legend “CONFIDENTIAL” to each page that contains protected material.

25 (b) for testimony given in deposition or in other pretrial or trial proceedings, the
 26 deposition transcript of any testimony reviewing, interpreting, or relating to “CONFIDENTIAL”
 27 material shall be treated as if designated “CONFIDENTIAL.”

6 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
7 designate qualified information or items does not, standing alone, waive the Producing Party's
8 right to secure protection under this Order for such material. Upon timely correction of a
9 designation, the Receiving Party must make reasonable efforts to assure that the material is
10 treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
13 confidentiality at any time. Unless a prompt challenge to the Producing Party's confidentiality
14 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
15 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
16 challenge a confidentiality designation by electing not to mount a challenge promptly after the
17 original designation is disclosed.

18 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
19 by contacting counsel for the Producing Party (identified below) and providing written notice of
20 each designation it is challenging and describing the basis for each challenge. To avoid ambiguity
21 as to whether a challenge has been made, the written notice must recite that the challenge to
22 confidentiality is being made in accordance with this specific paragraph of the Protective Order.
23 The Parties shall attempt to resolve each challenge in good faith and must begin the process by
24 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)
25 within 14 days of the date of service of notice. In conferring, the Challenging Party must explain
26 the basis for its belief that the confidentiality designation was not proper and must give the
27 Producing Party an opportunity to review the designated material, to reconsider the

1 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
2 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
3 has engaged in this meet and confer process first or establishes that the Producing Party is
4 unwilling to participate in the meet and confer process in a timely manner.

5 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without Court
6 intervention, the Challenging Party may file a motion challenging a confidentiality designation if
7 there is good cause for doing so, including a challenge to the designation of a deposition
8 transcript or any portions thereof. Any motion brought pursuant to this provision must be
9 accompanied by a competent declaration affirming that the movant has complied with the meet
10 and confer requirements imposed by the preceding paragraph. The Producing Party shall be
11 afforded at least seven (7) days to respond to any challenge before the hearing to resolve the
12 dispute.

13 The burden of persuasion in any such challenge proceeding shall be on the Challenging
14 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
15 unnecessary expenses and burdens on other Parties and/or the Producing Party) may expose the
16 Challenging Party to sanctions. While such a challenge is pending, all Parties shall continue to
17 afford the material in question the level of protection to which it is entitled under the Producing
18 Party's designation until the Court rules on the challenge.

19 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

20 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
21 produced by a Party in connection with this case only for prosecuting, defending, or attempting to
22 settle this litigation. Such Protected Material may be disclosed only to the categories of persons
23 and under the conditions described in this Order. When the litigation has been terminated, a
24 Receiving Party must comply with the provisions of section 12 below (FINAL DISPOSITION).

25 Protected Material must be stored and maintained by a Receiving Party at a location and
26 in a secure manner that ensures that access is limited to the persons authorized under this Order.

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
2 by the Court or permitted in writing by the Producing Party, a Receiving Party may disclose any
3 information or item designated “CONFIDENTIAL” only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
5 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
6 information for this litigation;

7 (b) the officers, directors, and employees (including House Counsel) of the Receiving
8 Party to whom disclosure is reasonably necessary for this litigation;

9 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is
10 reasonably necessary for this litigation and who have signed the “Acknowledgment and
11 Agreement to Be Bound” (attached hereto as Exhibit A);

12 (d) the Court and its personnel;

13 (e) court reporters and their staff, and Professional Vendors to whom disclosure is
14 reasonably necessary for this litigation;

15 (f) professional jury or trial consultants, and mock jurors to whom disclosure is
16 reasonably necessary for this litigation and who have signed the “Acknowledgment and
17 Agreement to Be Bound” (Exhibit A);

18 (g) mediators, or other Alternative Dispute Resolution facilitators;

19 (h) during their depositions, witnesses in the action to whom disclosure is reasonably
20 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A).

21 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material
22 may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

23 (g) the author or recipient of a document containing the information or a custodian or
24 other person who otherwise possessed or knew the information.

25 7.3 Additional Parties. This Stipulated Protective Order shall be effective and binding
26 even in the event it is not executed by a party presently or subsequently named or appearing in
27 this action. However any such party shall not have access to Protected Material until that party,

1 through counsel, has executed this Stipulated Protective Order agreeing to be fully bound by this
2 Order. In the event a new Party is added to this Stipulated Protective Order, the new Party will
3 file a “Notice of New Party to Stipulated Protective Order.” The Court need not issue any new
4 order reflecting the addition and, upon filing of the Notice, the new Party will be fully bound and
5 subject to the Court’s Order as if they had been an original signatory.

6 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
7 **OTHER LITIGATION**

8 If a Party is served with a subpoena or a Court order issued in other litigation that compels
9 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party
10 must:

11 (a) promptly notify in writing the Producing Party. Such notification shall include a
12 copy of the subpoena or Court order;

13 (b) promptly notify in writing the Party who caused the subpoena or order to issue in
14 the other litigation that some or all of the material covered by the subpoena or order is subject to
15 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order;
16 and

17 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
18 Producing Party whose Protected Material may be affected.

19 If the Producing Party timely seeks a protective order, the Party served with the subpoena
20 or Court order shall not produce any information designated in this action as “CONFIDENTIAL”
21 before a determination by the Court from which the subpoena or order issued, unless the Party has
22 obtained the Producing Party’s permission. The Producing Party shall bear the burden and
23 expense of seeking protection in that Court of its confidential material – and nothing in these
24 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
25 disobey a lawful directive from another Court.

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1 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 3 Material to any person or in any circumstance not authorized under this Stipulated Protective
 4 Order, the Receiving Party must immediately (a) notify in writing the Producing Party of the
 5 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
 6 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
 7 made of all the terms of this Order, and (d) request such person or persons execute the
 8 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9 **10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
 10 **PROTECTED MATERIAL**

11 When the Producing Party gives notice to Receiving Parties that certain inadvertently
 12 produced material is subject to a claim of privilege or other protection, any Receiving Parties
 13 must promptly return, sequester, or destroy the specified information and any copies it has; must
 14 not use or disclose the information until the claim is resolved; must take reasonable steps to
 15 retrieve the information if the Party disclosed it before being notified; and may promptly present
 16 the information to the Court under seal for a determination of the claim. The Producing Party
 17 must preserve the information until the claim is resolved.

18 **11. MISCELLANEOUS**

19 11.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
 20 seek its modification by the Court in the future.

21 11.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order,
 22 the Producing Party retains any and all rights it otherwise would have to object to disclosing or
 23 producing any information or item on any ground not addressed in this Stipulated Protective
 24 Order. Similarly, the Producing Party retains any and all rights to object on any ground to use in
 25 evidence of any of the material covered by this Protective Order.

26 **12. FINAL DISPOSITION**

27 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
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1 Receiving Party must return all Protected Material to the Producing Party or destroy such
2 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
3 compilations, summaries, and any other format reproducing or capturing any of the Protected
4 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
5 submit a written certification to counsel for the Producing Party (identified below) (and, if not the
6 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
7 category, where appropriate) all the Protected Material that was returned or destroyed and (2)
8 affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries
9 or any other format reproducing or capturing any of the Protected Material. Notwithstanding this
10 provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial,
11 deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial
12 exhibits, expert reports, attorney work product, and consultant and expert work product, even if
13 such materials contain Protected Material. Any such archival copies that contain or constitute
14 Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

15 SO STIPULATED:

16 Dated: October 28, 2014

LIONEL SAWYER AND COLLINS LLP

17 By:/s/ Ketan D. Bhirud

18 Charles H. McCrea, Jr. (SBN 104)
Ketan D. Bhirud (SBN #10515)

19 Attorneys for ReliaStar Life Insurance Company

20 Dated: October 28, 2014

21 HOLLEY, DRIGGS, WALCH, PUZEY & THOMPSON

22 By:/s/ Donna Wittig

23 F. Thomas Edwards (Nevada Bar No. 9549)
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26 Attorneys for Defendant Patrick Howerter

1 COHEN | JOHNSON

2 Dated: October 28, 2014

3 By: /s/ H. Stan Johnson

4 H. Stan Johnson (Nevada Bar No. 00265)
5 Bryan A. Morris (Nevada Bar No. 11217)
6 255 E. Warm Springs Road
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9 (Tel) 702-823-3500
10 (Fax) 702-823-3400

11 Attorneys for Defendants Grand Hills Resort
12 and Country Club, Inc.

13 **ORDER**

14 IT IS SO ORDERED.

15 Dated: November 3, 2014

16 By: Terry A. Deen
17 Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and
understand the Stipulated Protective Order Relating to Business that was issued by the United
States District Court for the District of Nevada, on _____, 2014, in the case of *ReliaStar*
Life Insurance Company, v. Grand Hills Resort and Country Club and Patrick Howerter, Case
No. 2:14-CV-01157. I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in
any manner any information or item that is subject to this Stipulated Protective Order to any
person or entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 District of Nevada, for the purpose of enforcing the terms of this Stipulated Protective Order,
15 even if such enforcement proceedings occur after termination of this action.

16 I hereby appoint _____ [print or type full name] of
17 _____ [print or type full address and telephone
18 number] as my Nevada agent for service of process in connection with this action or any
19 proceedings related to enforcement of this Stipulated Protective Order.

20 Date: _____

21 City and State where sworn and signed: _____

22 Printed name:

23 || [printed name]

24 || Signature:

25 || [signature]

26